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DISPATCHED BY

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )  
)  
)  
Rules and Regulations Implementing ) CC Docket 92-90  
the Telephone Consumer Protection )  
Act of 1991 )  
)

### ORDER ON FURTHER RECONSIDERATION

Adopted: April 3, 1997

Released: April 10, 1997

By the Commission:

### I. INTRODUCTION

1. In a Report and Order released on October 16, 1992,<sup>1</sup> the Commission amended its rules to establish procedures governing unwanted telephone solicitations and to regulate the use of automatic telephone dialing systems, prerecorded or artificial voice messages and telephone facsimile machines. In a Memorandum Opinion and Order released on August 7, 1995,<sup>2</sup> the Commission addressed arguments made by parties seeking reconsideration or clarification of various matters discussed in the Report and Order. On September 14, 1995, MCI Telecommunications Corporation ("MCI") filed a petition for clarification or, in the alternative, reconsideration of our Memorandum Opinion and Order, that required both a facsimile broadcast service provider and the entity on whose behalf the facsimile is transmitted be identified on each facsimile sent by the facsimile broadcaster. MCI contends that Section 68.318<sup>3</sup> of the Commission's rules requires the identification of only one entity, the one responsible for the content of the facsimile.<sup>4</sup> The Commission issued a Public Notice<sup>5</sup> on October 6, 1995, seeking

<sup>1</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order, 7 FCC Rcd 8752 (1992) (Report and Order).

<sup>2</sup> Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Memorandum Opinion and Order, 10 FCC Rcd 12391 (1995) (Memorandum Opinion and Order).

<sup>3</sup> 47 C.F.R. § 68.318.

<sup>4</sup> MCI Petition at 1.



comment on the MCI petition. Three comments<sup>6</sup> were filed in response to the Public Notice, and MCI filed a reply. We grant MCI's request for clarification or, in the alternative, reconsideration of our Memorandum Opinion and Order by stating that a message sent by a facsimile broadcast service provider must contain the identification and telephone number of the entity on whose behalf the message was sent.

## II. BACKGROUND

2. The Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102-243 (1991), amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 et seq., by adding a new section, 47 U.S.C. § 227. The TCPA restricted the use of telephone equipment for telemarketing purposes by imposing restrictions on the use of automatic dialing systems, of artificial or prerecorded voice messages, and of telephone facsimile machines to send unsolicited advertisements. The TCPA prohibited the transmission of unsolicited advertisements by telephone facsimile machines and required those using telephone facsimile machines or transmitting artificial or prerecorded voice messages to identify themselves to message recipients. The Commission sought to implement the TCPA in a way that reasonably accommodated individuals' rights to privacy as well as the legitimate business interests of telemarketers. We amended Section 68.318 of the Commission's rules to require that all facsimile transmissions identify the business, entity or individual sending the message and the telephone number of the sending machine or of such business, entity or individual sending the message. In the Memorandum Opinion and Order we further stated that facsimile broadcast service providers<sup>7</sup> also must comply with these identification requirements. We required that a facsimile broadcast service provider transmitting messages for multiple entities ensure that its own identifying information and the identifying information of each entity on whose behalf it has sent messages appear separately on facsimile broadcasts.<sup>8</sup> We reconsider our decision in the Memorandum Opinion and Order and require that a facsimile broadcast service provider ensure that the identifying information of the entity on whose behalf the provider sent messages appear on facsimile messages.

3. MCI, Sprint and Ameritech argue that the Commission erred in stating that the facsimile broadcast service provider must ensure that two identifications, that of the entity on whose behalf the facsimile was sent and that of the facsimile broadcast service provider, appear

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<sup>5</sup> Public Notice, Commission Seeks Comment on MCI Petition for Clarification and/or Reconsideration of Commission Order Finalizing Rules Implementing the Telephone Consumer Protection Act, DA 95-2030, 10 FCC Rcd 13168 (1995).

<sup>6</sup> Comments were filed by Sprint Communications Company L.P. ("Sprint"), Russell R. Smith ("Smith") and the Ameritech Operating Companies ("Ameritech").

<sup>7</sup> Facsimile broadcast service providers are businesses or individuals that transmit messages on behalf of other entities to selected destinations and that do not determine either the message content or to whom they are sent.

<sup>8</sup> See Memorandum Opinion and Order, 10 FCC Rcd at 12407, para. 35.



on each facsimile message the facsimile broadcast service provider sends.<sup>9</sup> While Ameritech argues that the Commission erred in requiring dual identification, it requests that the Commission allow a facsimile broadcast provider to supply dual identification if it chooses to do so.<sup>10</sup> Smith, however, requests that the Commission deny MCI's petition and affirm the requirement that both the facsimile broadcast service provider and the entity on whose behalf the facsimile was sent place identifying information on a facsimile message.<sup>11</sup>

4. MCI, Sprint, and Ameritech contend that Section 68.318(c)(3) of the Commission's rules requires that only one entity be identified as the sender of the facsimile and that the Commission's Memorandum Opinion and Order creates an additional obligation by requiring the identification of two entities.<sup>12</sup> Section 68.318(c)(3) provides that:

It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile unless such message contains, in a margin at the top or bottom of each transmitted page or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual *sending the message* [emphasis added] and the telephone number of the sending machine or of such business, other entity, or individual . . . Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted message.<sup>13</sup>

MCI asserts that the "message sender" is the entity responsible for the content of the message and only its identifying information should be placed on the facsimile message. MCI states that the facsimile broadcast service provider is not responsible for the content of the message that it transmits and, therefore, it should not be identified as the message sender.<sup>14</sup> Ameritech asserts that neither the TCPA nor the Commission's orders in this docket state an intent to define a facsimile broadcast service provider as a "sender" under Section 68.318(c)(3).<sup>15</sup> Notwithstanding these claims, Smith states that Section 68.318(c)(3) requires that identification of the facsimile broadcast service provider be placed on the facsimile message and Section 64.1200(e)(iv), the rule regarding identification of a telephone solicitor, requires that identification of the entity whom

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<sup>9</sup> See MCI Petition at 1; Sprint Comments at 2-3; Ameritech Comments at 2; MCI Reply at 2.

<sup>10</sup> See Ameritech Comments at 2.

<sup>11</sup> See Smith Comments at 1.

<sup>12</sup> See MCI Petition at 1; Sprint Comments at 3; Ameritech Comments at 2; MCI Reply at 1.

<sup>13</sup> 47 C.F.R. § 68.318(c)(3).

<sup>14</sup> See MCI Petition at 1-2; Sprint Comments at 2; Ameritech Comments at 2; MCI Reply at 1.

<sup>15</sup> See Ameritech Comments at 2, fn. 4.



the facsimile broadcaster represents (by transmitting the facsimile) be contained within the body of the facsimile.<sup>16</sup>

5. Parties also argue that facsimile broadcast service providers are not ultimately liable for failure to comply with Section 64.1200(a)(3), the rule banning unsolicited facsimile advertisements,<sup>17</sup> and thus there is no reason for their identifying information to appear on the facsimile message.<sup>18</sup> MCI and Sprint assert that if a facsimile message is sent in violation of Section 64.1200(a)(3), the identification and telephone number of the entity on whose behalf the facsimile was sent will give the recipient consumer the information necessary to initiate a contact or complaint and to prevent the consumer from receiving additional unwanted facsimiles.<sup>19</sup> Parties contend that dual identification will confuse facsimile recipients as to who is responsible for the message and may cause consumers incorrectly to link the facsimile broadcast service provider to the content of the message.<sup>20</sup> In contrast, Smith reports that dual identification may allow consumers to trace unwanted facsimiles through the broadcaster when the identity of the entity on whose behalf the facsimile was sent is not clear.<sup>21</sup> After reviewing the complaints filed with the Commission under the TCPA, Smith states that in many facsimile complaint cases there is a lack of sufficient identifying information by the sender of the facsimile message.<sup>22</sup> Finally, Smith notes that a facsimile broadcast service provider could put a disclaimer on the facsimile message to ensure that the recipient does not associate it with the content of the message.

### III. DISCUSSION

6. The purpose of Section 68.318(c)(3), which parallels the language of the TCPA,<sup>23</sup> is to ensure that consumers will have the information they need to identify the sender of an unsolicited facsimile message.<sup>24</sup> Section 68.318(c)(3) requires that all facsimile transmissions

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<sup>16</sup> See Smith Comments at 2.

<sup>17</sup> See Memorandum Opinion and Order, 10 FCC Rcd at 12407, para. 35.

<sup>18</sup> See Sprint Comments at 2-3; MCI Reply at 1-2.

<sup>19</sup> See MCI Petition at 2; Sprint Comments at 2; MCI Reply at 1.

<sup>20</sup> See MCI Petition at 2; Sprint Comments at 3; Ameritech Comments at 2; MCI Reply at 1-2.

<sup>21</sup> See Smith Comments at 2.

<sup>22</sup> See Smith Comments at 1, Appendix.

<sup>23</sup> See 47 U.S.C. §§ 227(d)(1) and 227(d)(2).

<sup>24</sup> In our Report and Order, we noted that carriers who transmitted unsolicited facsimile advertisements on behalf of other entities would be not liable for failure to comply with Section 64.1200(a)(3), the rule banning unsolicited facsimile advertisements, unless they had "a high degree of involvement" in sending the unsolicited facsimile



provide two informational elements: (1) the identity of the business, entity or individual sending the message; and (2) the telephone number of the sending machine or of such business, entity or individual sending the message. MCI contends that only the identity and telephone number of the "message sender," which it defines as the entity responsible for the content of the message, should appear on a facsimile message sent by a facsimile broadcast service provider. Having reviewed the pleadings, the TCPA's statutory language<sup>25</sup> and the legislative history of the TCPA,<sup>26</sup> we reconsider our determination in our Memorandum Opinion and Order that a facsimile broadcast service provider must ensure that its identifying information and the identifying information of the entity on whose behalf it sent facsimile messages must appear on the messages. We clarify that the sender of a facsimile message is the creator of the content of the message. We find that the Section 227(d)(1)<sup>27</sup> of the statute mandates that a facsimile include the identification of the business, other entity, or individual creating or originating a facsimile message and not the entity that transmits the message.<sup>28</sup> We do not find anything in the TCPA that would prohibit a facsimile broadcast provider from supplying identification of itself and the entity originating a message if it arranges with the message sender to do so. This, however, is a matter between the parties, and we emphasize that in cases where parties choose to place dual identification upon the facsimile message, it must be clear which entity is the content originator and which entity is merely the transmitter of the message. Thus, we protect consumers' rights to identify the sender of an unsolicited facsimile message without unduly hindering the business practices of facsimile broadcast service providers.

#### IV. ORDERING CLAUSE

7. Accordingly, pursuant to Sections 4(i), 227(d)(2) and 405(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 227(d)(2) and 405(a), and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, IT IS ORDERED, that MCI's petition for clarification or, in the alternative, reconsideration is GRANTED.

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messages or had actual notice of the illegal messages and failed to take steps to prevent such transmissions. See Report and Order, 7 FCC Rcd at 8779, para. 54.

<sup>25</sup> See 47 U.S.C. §§ 227(d)(1) and 227(d)(2).

<sup>26</sup> See S. Rep. No. 178, 102d Cong., 1st Sess. 9 (1991).

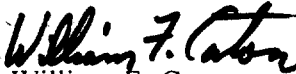
<sup>27</sup> See 47 U.S.C. § 227(d)(1).

<sup>28</sup> See Memorandum Opinion and Order, 10 FCC Rcd at 12407, fn. 90. S. Rep. No. 178, 102d Cong., 1st Sess. 9 (1991) states that:

regulations concerning the use of these machines apply to the persons initiating the telephone call or sending the message and do not apply to the common carrier or other entity that transmits the call or message and that is not the originator or controller of the content of the call or message.



FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "William F. Caton". The signature is written in a cursive, flowing style.

William F. Caton  
Acting Secretary